

REMARKS/ARGUMENTS

Favorable reconsideration of this application in view of the above amendments and in light of the following discussion is respectfully requested.

Claims 1-10, 12, 13, 15, 17-28, and 33-44 are pending. None of the specification, claims or drawings are amended by way of the present Response.

Initially, Applicants note the outstanding Office Action was improperly made Final. Applicants note Prosecution was reopened in a Notice of Panel Decision from Pre-Appeal Brief Review dated March 9, 2010. The outstanding Office Action includes a new ground of rejection. As explained in M.P.E.P. § 1207.04, there are only two circumstances under which an Office Action containing a new ground of rejection may be made final: (A) if the new ground of rejection was necessitated by amendment, or (B) if the new ground of rejection was based on information presented in an information disclosure statement under 37 C.F.R. § 1.97(c) where no statement under 37 C.F.R. § 1.97(e) was filed. In the present case, the new ground of rejection was not necessitated by an amendment or the submission of an IDS. Instead, this new ground of rejection comes in response to the arguments made without amendment in the Remarks accompanying a Pre-Appeal Brief Request for Review filed on January 22, 2010. Accordingly, it is respectfully requested the finality of the outstanding Office Action be withdrawn.

The Office Action rejected Claims 1, 2, 4, 5, 7, 8, 10, 12, 13, 15, 17, 18, 23, 26-28, 33, 34 36-38 and 40-44 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent 6,990,238 to Saffer et al. (herein "Saffer") in view of Xia Lin, et al., "A Self-Organizing Semantic Map ..." (herein "Lin") and screen shots from the website <http://docstore.mik.ua/orelly/networking/puis/index.htm> (hereinafter, "the UNIX screenshots"); rejected Claims 3, 6, 9, 19, 20, 24, 25, 35 and 39 under 35 U.S.C. § 103(a) as

unpatentable over Saffer in view of Lin, the UNIX screenshots and U.S. Patent No. 6,446,061 to Doerre et al. (herein "Doerre"); and rejected of Claims 21 and 22 under 35 U.S.C. § 103(a) as unpatentable over Saffer in view of Lin, the UNIX screenshots, Doerre, and U.S. Patent 5,977,992 to Branscomb.

Applicants note the Unix screenshots do not qualify as prior art with respect to the present application. The Office Action makes reference to six screen shots, and lists the following website on Form PTO-892:

<http://docstore.mik.ua/oreilly/networking/puis/index.htm> (hereinafter, "the UNIX website")

In rejecting Claims 1-10, 12, 13, 15, 17-28, and 33-44, the Office Action relies on functional aspects of the UNIX website.¹ The Unix website includes a republication of the text of the book *Practical UNIX & Internet Security* and the following bibliographic information:

By Simson Garfinkel & Gene Spafford; ISBN 1-56592-148-8, 1004 pages.

Second Edition, April 1996

The bottom of the UNIX website includes the following notice:

Copyright © 1999 O'Reilly & Associates. All Rights Reserved.

However, regardless of when the book *Practical UNIX & Internet Security* was originally published (1996), and regardless of the copyright date on the UNIX website (1999), these dates are not evidence of when the functional aspects of the website that currently display this copyrighted material were originally incorporated into the website, and thereby made known to the public. Indeed, the publication date of *Practical UNIX & Internet Security* is a date that the content appeared in an entirely different media, a printed book.

¹ See, for example, the Office Action at page 5, lines 7-13.

Nevertheless, the Examiner asserts in a footnote on page 5 of the Office Action that “Examiner Notes: The Screen Shots have been provided for Unix and Internet Security to show the claimed features. Also, the website has been provided (see Notice of References Cited). Lastly, this book was of public knowledge in 1996 and the website was copyrighted in 1999.” This statement may be correct with respect to the content of the text on the UNIX website, but is not correct with respect to the functional aspects of the UNIX website that the Office Action relies on to reject Claims 1-10, 12, 13, 15, 17-28, and 33-44.

M.P.E.P. § 2128 does allow for prior art disclosures on the Internet or on an on-line database to be considered to be publicly available as of the date the item was publicly posted. However, absent evidence of the date that the disclosure was publicly posted, if the publication itself does not include a publication date (or retrieval date), M.P.E.P. § 2128 makes it clear that the publication cannot be relied upon as prior art.

In the present case, the Office Action asserts that various functional aspects of the noted website (for examples, the arrows that indicate previous and next page) disclose features recited in the claims of the present application, but then relies on the publication date of the content on these websites as evidence of the date the functional aspects were known. However, neither the date the content, in this case a republication of a printed book on the website, was originally published nor the date that content was copyrighted are not evidence of when the functional aspects of the website that currently display that content were originally incorporated into the website, and thereby made known to the public.

With respect to publication date and copyright dates, the UNIX website is a current website that includes content which the website indicates was published in April of 1996 and copyrighted in 1999. Although the contents of this publication can be relied upon as being publicly available as of the publication and copyright dates, the publication and copyright

dates of the book is not evidence that the websites itself, including all of its current functional elements, were available at the time the book was originally posted. For example, the U.S. PTO recently rolled out a new website that republishes numerous articles that are very old using the latest functional display components. The original publication date of each of these articles might, in some circumstances, be used as evidence for when these articles were first available to the public, but in no way evidences when the website itself, as it currently appears was initially launched.

The present application claims priority to GB0227683.0, which was filed on November 27, 2002. The Final Action fails to provide any credible evidence as to when the functional aspects of the UNIX website was made known to the public. Accordingly, the UNIX screenshots do not qualify as prior art with respect to the aspects relied on by the Examiner to reject Claims 1-10, 12, 13, 15, 17-28, and 33-44 of the present application.

Accordingly, the rejections of Claims 1-10, 12, 13, 15, 17-28, and 33-44 that rely on the UNIX screenshots are improper, and should be withdrawn.

Further, even if the UNIX website is considered, the UNIX website fails to disclose or suggest an apparatus in which, when viewing a first cluster in one of the hierarchical levels within the display area of the graphical display, the display processor is operable to generate data which is displayed as a direction indicating symbol on the graphical user interface providing a user with a relative direction within the n-dimensional display of the location of a second cluster within a same hierarchical level as the first cluster, as recited in Claim 1.

In particular, the Office Action points to the “NEXT” and “PREVIOUS” graphics illustrated in Figure 3 of the UNIX screenshots provided with the Office Action, and asserts the UNIX screenshots disclose a direction indicating symbol providing the user with a second

cluster within a same hierarchical level as the first cluster, the second cluster being located outside the display area.

The “NEXT” and “PREVIOUS” symbols on the UNIX website are, in fact, HTML graphical objects that include a hyperlink to another page of content. Thus, when a user clicks on one of these symbols, they are taken to a different web page of content. However, the “NEXT” and “PREVIOUS” graphics do not relate to a direction of a second cluster in the manner recited in Claim 1. As shown in Figure 3 of the UNIX screenshots provided with the Office Action, the symbol associated with the “NEXT” graphic points to the right, and the “PREVIOUS” graphic points to the left. However, there is no cluster, or any other information, to either the right or the left of the screen shot of Figure 3.

In other words, although the “NEXT” and “PREVIOUS” graphics might be identified as symbols, these symbols do not convey any direction whatsoever in the manner recited in Claim 1. For example, Claim 1 recites (emphasis added) “the graphical user interface is operable to display the direction indicating symbol indicating the relative direction of the second cluster within the display area of the graphical display with respect to a position of the first cluster in the display area.” The “NEXT” and “PREVIOUS” graphics in Figure 3 of the UNIX screenshots provided with the Office Action do not provide a “relative direction” to anything. Instead, as noted above, they merely provide links to different pages of content within a specified order of pages of content.

Accordingly, for at least the above noted reasons, even the combined teachings of the cited references fail to disclose or suggest all of the features recited in Claim 1. It is submitted Claim 1 and the claims depending therefrom are in condition for allowance.

Although differing in scope, Claims 19, 23, 33 and 42-44 recite similar features to those discussed above with respect to Claim 1. Accordingly, Claims 19, 23, 33 and 42-44,

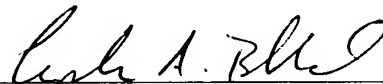
and the claims depending therefrom, are believed to be in condition for allowance for at least the same reasons as those discussed above with respect to Claim 1.

For the reasons discussed above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance for Claims 1-10, 12, 13, 15, 17-28, and 33-44 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,

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